



Trina Washington is the mother of P.T. (born April 11, 2006) and A.T. (born November 19, 2008). In November 2008, Washington was on bed rest for three weeks while pregnant with A.T. During that time, she was unable to care for P.T., so she had P.T. stay with Idris Turner, her boyfriend at the time.<sup>1</sup> But, Washington had signed a safety plan in August 2008 in which she agreed not to allow Turner to have any unsupervised contact with P.T. This safety plan arose from an incident where Turner spanked two year old P.T. in front of hospital staff. Turner also had a significant history of domestic violence convictions prior to 2008. But, Washington testified that when she left P.T. in Turner's care, she had no concerns about his violent behavior

When Turner returned P.T. to Washington 10 days later, P.T. was unconscious with massive injuries to her body. Washington took P.T. to the emergency room, where P.T. was placed into protective custody. P.T. suffered a brain injury, retinal bleeding and visual impairment, seizures, lacerations, bruising, lesions, hair loss, a second degree burn on her hand, and scars of varying age over much of her body. The scars were strongly suggestive of a whipping event a week or two prior to hospitalization. These extensive injuries, and congenital conditions aggravated by the injuries, left P.T. with lifelong special needs.

While P.T. was in the hospital, Washington and Turner took A.T. and headed to the airport. There, Turner was arrested. A Department of Social

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<sup>1</sup> Turner is A.T.'s father, but not P.T.'s father. P.T.'s father is Payzarr Thomas, whose parental rights were terminated by default on November 4, 2010.

Health and Services (DSHS) social worker believed Washington might have been trying to leave the area. DSHS soon after made a finding of neglect against Washington and placed A.T. in protective custody. DSHS determined that Washington disregarded the welfare of A.T. by allowing Turner to have unsupervised access to her after injuring P.T. Turner was later convicted of first degree assault of a child for P.T.'s injuries. His earliest release date from jail is 2019.

On March 18, 2009, a court ordered Washington to participate in a psychological evaluation, related treatment, age appropriate parenting classes, and mental health counseling with emphasis on domestic violence victimization. The court ordered supervised visitation with P.T. but delayed it for A.T.

Washington was referred to Dr. Beverly Cartwright for the psychological evaluation. Cartwright diagnosed Washington with an anxiety disorder and depression, and found that Washington used passivity and withdrawal as a defense. Cartwright was specifically concerned with Washington's unwillingness to end her relationship with Turner. For instance, Washington denied that Turner was responsible for P.T.'s injuries. Cartwright also recognized that Washington had significant levels of internalized anger, and recommended additional mental health services. Cartwright believed that Washington's anger could be displaced toward her children. She concluded that Washington was unable to provide for the emotional safety and welfare of her children at that time, in June 2009. She recommended that Washington participate in cognitive behavioral therapy for at least one year.

In July 2010, DSHS referred Washington to Dr. Carmela Washington-Harvey for cognitive behavioral therapy. Washington-Harvey saw Washington from October 2010 to February 2011. They created a treatment plan together to work on Washington's anger and depression. Washington reported that her diabetes fuels her depression, but she is reluctant to take depression medication. Washington-Harvey noted that Washington's faulty decision-making hindered her cognitive patterns, and her bad decisions exacerbated her depression. Washington ended her treatment after only 9 therapy sessions, even though Washington-Harvey was available for the entire year of recommended treatment.

Also in July 2010, Washington engaged in a mental health intake with Evelyn Moser, a mental health counselor at Sound Mental Health. Washington reported severe panic attacks, waking out of sleep, depression, a long history of cutting behavior, and that she attempted suicide in 2007. Moser diagnosed Washington with moderate major depressive disorder, panic disorder, and cannabis dependence in sustained remission. But, Washington did not attend any counseling sessions with Moser and was discharged from Sound Mental Health in October 2010.

In December 2010, Washington underwent a psychiatric evaluation with Dr. Cara Dalbey for DSHS. Washington reported that her depression and diabetes made her unable to work. She also told Dalbey that she was homeless and living in her car after losing her apartment three weeks earlier. And, Washington reported smoking marijuana several times a day to combat low

appetite and to help with her anxiety.

In January 2011, Washington pleaded guilty to theft 3 for taking merchandise from Target. She was ordered not to use, possess, or consume any alcohol or non-prescribed drugs. Washington began chemical dependency treatment at a counseling organization for cannabis dependence and alcohol abuse. She enrolled in intensive outpatient treatment with group meetings twice per week for three months, with decreasing frequency thereafter. But, Washington's attendance was inconsistent because of health problems, and she only completed 12 group sessions before leaving treatment.

In June 2011, Washington attended counseling intake with Danny Gellerson, a clinical social worker at the same counseling organization. Washington told Gellerson that she experienced depressed mood, excessive guilt, decreased sleep and appetite, low energy, and other symptoms. Washington also told Gellerson that her diabetes and hypertension were uncontrolled at that time. She reported using marijuana to treat her pain and nausea. Though she said she was in drug treatment and open to exploring her dependence on marijuana, she mostly did not see marijuana as a problem.

Washington also told Gellerson that she was currently living in her car with her fiancée, Chris Felder. Washington and Felder's relationship was rocky, she explained, because of her selfishness, hitting him, and yelling at him. At the time of trial, Washington was still in a relationship with Felder and acknowledged his criminal court involvement for domestic violence charges. Washington told the court that she was not concerned, though, because she believed his charges

would be dismissed. Gellerson diagnosed her with recurrent and moderate major depressive disorder, anxiety disorder by history, passivity and withdrawal as defenses, and cannabis abuse by history. Washington completed only nine counseling sessions at the organization between July 2011 and the start of trial.

Also in 2011, Washington was pregnant with her third child, G.F. Because of complications with her diabetes that caused nausea and vomiting, Dr. Zane Brown prescribed Marinol (a synthetic THC (tetrahydrocannabinol)) for Washington. After G.F. was born, Brown refused to renew Washington's Marinol prescription, because he could not determine whether her request was medically needed or drug seeking behavior.

In June 2011, Washington was convicted and sentenced for a December 2010 DUI (driving while under the influence)-marijuana charge that had been continued. By that time, Washington had new criminal violations, including driving without a valid license and prostitution. Following her DUI-marijuana conviction, the court ordered Washington to be monitored for drug and alcohol consumption. She was also ordered not to drive while taking Marinol.

DSHS soon after petitioned the trial court requesting termination of Washington's parental rights for P.T. and A.T. In October 2011, the trial court held a fact finding hearing to determine whether termination was proper. The court found that Washington was currently unfit to parent P.T. and A.T., continuation of the parent-child relationship diminished P.T. and A.T.'s prospects for early integration into a stable and permanent home, and the children had prospects for adoption. The court concluded that ending the parent-child

relationship was in the children's best interest, and terminated Washington's parental rights. Washington timely appealed.

#### DISCUSSION

Parents have a fundamental liberty interest in the care and welfare of their children, and State interference is never to be taken lightly. In re Dependency of Schermer, 161 Wn.2d 927, 941, 169 P.3d 452 (2007). But, the State has an interest in protecting the physical, mental, and emotional health of children, as well. Id. To terminate parental rights, the State must first prove the six elements of RCW 13.34.180 by clear, cogent, and convincing evidence. In re Dependency of K.N.J., 171 Wn.2d 568, 576, 257 P.3d 522 (2011). Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown by the evidence to be highly probable. In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995). The six requirements are:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. . . ; [and]

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

RCW 13.34.180(1). Once these six statutory elements are met, the State must still prove by a preponderance of the evidence that termination is in the best interests of the child. RCW 13.34.190(1)(b); K.N.J., 171 Wn.2d at 577.

On appeal, findings of fact must be supported by substantial evidence in light of the clear, cogent, and convincing standard. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997); K.N.J., 171 Wn.2d at 576-77. We do not weigh the evidence or credibility of the witnesses. In re Welfare of Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). Rather, we give deference to the trial court's advantage in directly observing witness testimony. Id. Unchallenged findings of fact are verities on appeal. In re Interest of J.F., 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).

I. Best Interests of the Child

Washington does not dispute that all six procedural requirements to terminate parental rights under RCW 13.34.180 were met. Instead, she argues that the State failed to show that terminating her parental rights was in the best interests of her children. Washington contends that she made progress during dependency and there is a clear bond between her and her children. She maintains that she has shown several strengths as a parent during visits with her daughters. Social workers noted Washington was affectionate, loving, and attentive to A.T.'s needs during visits. Washington explains that she welcomes the unique challenges of P.T.'s special needs and believes her children's



differences make them special.

Washington courts hold that the factors involved in determining the best interests of the child are not capable of specification. Aschauer, 93 Wn.2d at 695; In re the Dependency of A.V.D., 62 Wn. App. 562, 572, 815 P.2d 277 (1991). Rather, each case must be decided on its unique facts and circumstances. Aschauer, 93 Wn.2d at 695. Despite Washington's affection and love for her children, she continues to demonstrate that she is unfit as a parent. Indeed, she does not assign error to the trial court's finding of fact that she is currently unfit to parent P.T. and A.T.

Both P.T. and A.T. require a stable, consistent care provider for their emotional and medical needs. P.T. has significant ongoing medical, emotional, academic, and behavioral needs because of injuries and congenital conditions. In addition to her primary care doctor, P.T. sees an eye doctor, neuro-developmental rehabilitation doctor, urologist, gastro-intestinal doctor, behavioral psychologist, dermatologist, and a mental health counselor. She has between one and four doctor's appointments per month, in addition to her mental health counseling. Now six years old, P.T. continues to struggle with toilet training, because she has neurogenic bowel and bladder problems that require medication, stimulation of her rectum, and timed voidance. This condition requires care, attention, patience, and supervision. P.T. also suffers from a brain injury, blindness in one eye, seizures, and an unsteady gait. A.T. likewise requires structure, consistency, and supervision in a stable environment.

Washington has demonstrated consistent inability to care for her

children's special needs. She struggles to meet her own medical and mental health needs. She is unable to effectively manage her diabetes. For instance, she reported eating only once or twice a day, despite her need for regular meals and snacks. She makes frequent trips to the emergency room, because of diabetes complications. Washington has also failed to engage consistently in required mental health treatment. Though she is cooperative upon intake, she fails to follow through with her therapists. Her emotional instability, depression, anxiety, and anger issues all affect her parenting abilities. But, these conditions remain largely untreated.

Moreover, her visitation with her children was sporadic and inconsistent. She visited P.T. approximately six times in all of 2010. Washington often failed to appear for scheduled visits with her children. Even in the two months preceding trial, she missed one-third of her visits. Her excuses for missing visitations include getting her car towed, not having a telephone to confirm visits, jail time, not being able to wake up in time, and not having transportation, despite public transportation passes and even personal rides provided by DSHS. Even though Washington's engagement with her children was generally positive during visitations, the children were wary and cautious of their mother. And, social workers observed Washington become threatening and aggressive toward A.T.'s foster mother in front of A.T.

Washington also continues to exercise poor judgment and faulty decision-making. For example, Washington took her children shopping at Target, despite having a no contact order with Target and her social worker warning her not to

go. She did not consider the risk of arrest and the impact on her children of seeing her arrested. Washington was also under court order not to drive while using Marinol. She chose to continue using Marinol instead of having transportation to meet her children's needs.

Washington continues to minimize Turner's involvement in abusing P.T., as well as her own role in letting Turner take care of P.T. despite his history of violent behavior. Washington also reported that she is physically abusive of her fiancée, Chris Felder. She acknowledged domestic violence charges pending against Felder, but testified that she is not concerned, because she believed the charges would be dropped. At the time of fact finding, she showed little progress in identifying and avoiding abusive relationships. Washington's criminal history also includes prostitution in 2010, DUI-marijuana in 2010, third degree theft for taking merchandise from Target in 2011, and a forgery charge pending at the time of termination proceedings.

While Washington undoubtedly loves her children and desires to have them with her, there is substantial evidence that she is likewise incapable of caring for them and adequately protecting them. She has been unable to cope with her own medical and mental health problems, much less those of her children. Despite some strengths as a parent, she has not followed through with treatment and shows no indication that this will change in the near future. Her depression, anxiety, ongoing anger issues, instability, poor decision-making, and unwillingness to accept her role in protecting her children demonstrate that she lacks the capacity for giving parental care. P.T. and A.T.'s physical and

emotional needs require stability and attention. To postpone their access to stability in the hope that Washington will be able to correct significant, ongoing mental health problems is to ignore the children's needs.

There is substantial evidence here that the best interests of the children require that they be placed in a stable, nurturing home. We are always reluctant to deprive parents of rights with respect to their children, and it is particularly sad when the parent cares for the children and desires to be good parent. But, it is this court's duty to protect the best interests of the children. We hold the trial court did not err in concluding that termination of Washington's parental rights was in P.T. and A.T.'s best interest.

## II. Challenged Findings of Fact

In addition to assigning error to the finding that termination was in her children's best interest, Washington assigns error to seven other findings of fact.<sup>2</sup> All these findings of fact relate to Washington's prescription for Marinol, her marijuana use and dependency, and her ongoing substance abuse. Specifically, Washington argues that the trial court erred in entering findings of fact 2.79, 2.80, 2.109, and 2.110. These findings state that Washington's prescription for Marinol made it difficult to know whether she used marijuana in addition to her prescription. They also state that Washington used marijuana in addition to her prescription and that she was cannabis dependent, despite her denials. Washington also argues that the trial court erred in entering findings of

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<sup>2</sup> Specifically, she assigns error to findings of fact 2.79, 2.80, 2.109, 2.110, 2.120, 2.122, and 2.127, to the degree they are construed as a parental deficiency.

fact 2.120, 2.122, and 2.127. These findings state that Washington remains in the same position she was at the time the children came into the State's care. Washington assigns error to the portion of these findings that claim she has chemical dependency issues that remain untreated.

Washington asserts that these findings are unsupported by the record and irrelevant to the degree they are construed as parental deficiencies. She argues that the State provided no evidence linking her marijuana use to her ability to care for her daughters, and showed no nexus between marijuana addiction and parenting ability. Because the State failed to show how her alleged marijuana use had any impact on P.T. and A.T., Washington argues the findings should be stricken as irrelevant.

There is ample evidence in the record to support the findings of fact related to Washington's cannabis dependency. Multiple treatment providers testified that Washington reported she used marijuana regularly. For instance, Washington told Dr. Dalbey in December 2010 that she was smoking marijuana daily to increase her appetite and help with her anxiety. Dalbey also testified that Washington was aware her marijuana use caused social impairment and increased her irritability. Dalbey explained that Washington's marijuana use was at an "abuse level." A social worker who met with Washington in July 2011 also testified that Washington was very open about her marijuana use. Washington told the social worker that she used marijuana out of necessity while pregnant, but also to "cope with issues."

Likewise, in May 2011, Washington engaged in cannabis dependence

treatment with another counselor. The counselor testified that Washington was unsuccessful in cutting down her substance abuse. She explained that Washington gave up or reduced important social activities because of her substance use. And, Washington “continued substance abuse despite having persistent or recurrent physical or psychological problems.” That same counselor testified that Washington’s prescription for Marinol impacted her chemical dependency treatment, because it was difficult to know whether Washington was using marijuana in addition to Marinol. As a result, the counselor was unable to say whether Washington was using only Marinol or supplementing it with marijuana.

The record also supports the findings of fact that Washington’s chemical dependency issues remain untreated. Washington was court-ordered to attend marijuana and alcohol abuse treatment after her DUI-marijuana conviction. But, her attendance at chemical dependency treatment was inconsistent, and she attended far fewer than the required amount of sessions. Washington’s probation officer testified that Washington was in minimal compliance with her court-ordered drug treatment and she was not currently in treatment. Washington enrolled in an alternative treatment program at Recovery Centers of King County, but at the time of trial had only attended two sessions. All these facts support the trial court’s findings that Washington’s chemical dependency issues remain untreated.

The nexus between Washington’s marijuana use and its effect on her parenting ability is also well supported by the record, as well as uncontested

findings of fact. Washington does not contest findings of fact that she suffers ongoing mental health problems. For instance, she has been diagnosed with depression, anxiety, extreme fatigue, lethargy, and persistent irritability. Mental health specialists treating Washington testified that these symptoms were significant enough to interfere with her daily functioning. Dr. Dalbey testified that marijuana can exacerbate depression and leads to increased irritability. Washington herself acknowledged that smoking marijuana increased her irritability. Indeed, Washington does not assign error to the court's finding that her depression can be exacerbated by marijuana use. Washington's untreated mental health issues are a significant reason for termination of her parental rights.<sup>3</sup>

Moreover, Washington chose to forgo vehicle transportation so she could maintain her Marinol prescription. This choice was to the detriment of her children, because she often claimed she had no transportation to scheduled visitations, therefore missed opportunities to spend time with her children. And, her DUI-marijuana conviction meant time in jail and additional treatment programs, again impacting visitations with her children. A parent's inability to perform her parental obligations because of imprisonment is relevant to the child's welfare. In re Dependency of J.W., 90 Wn. App. 417, 426, 953 P.2d 104 (1998). These decisions clearly impact Washington's ability to make appropriate

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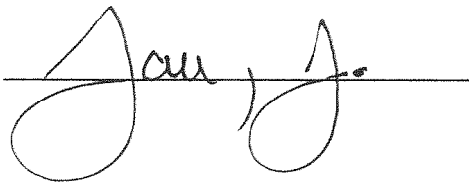
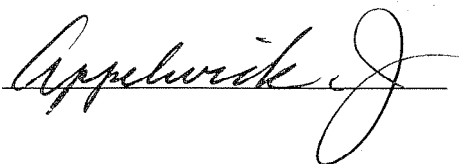
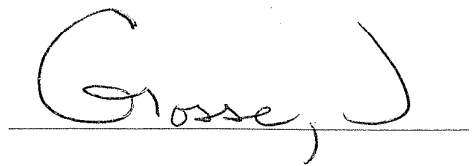
<sup>3</sup> Washington assigns error to finding of fact 2.120, but only the portion of the finding that related to her chemical dependency issues. The other portion of the finding states that Washington's "significant mental health issues remains untreated."

decisions regarding the care and welfare of her children.

The State has established by substantial evidence that there is a nexus between Washington's marijuana use and her parental deficiencies, because marijuana use is a contributing factor to her ongoing mental health problems. This is both common sense and well supported by the record as well as uncontested findings of fact. Moreover, even if we were to strike the challenged findings of fact from the record, what remains is still clear, cogent, and convincing evidence to support termination of Washington's parental rights. Washington continues to make poor decisions and has done little to address her ongoing mental health issues, all of which affect her parenting abilities.

We affirm.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Jan J.", written over a horizontal line.  
Two handwritten signatures in cursive script, one above the other, both written over horizontal lines. The top signature appears to read "Appelwick, J." and the bottom signature appears to read "Grosse, J."